

EXHIBIT 1



March 18, 2019

VIA CERTIFIED MAIL

Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, Suite 729H
Washington, DC 20201

RE: Freedom of Information Act Appeal – Request #19-00493-FOIA

Dear Deputy Agency Chief FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6)(A), and Department of Health and Human Services (HHS) regulations at 45 C.F.R. § 5.62, American Oversight submits the following administrative appeal.

Background

On February 27, 2019, American Oversight submitted a FOIA request to the Centers for Disease Control (CDC), bearing internal tracking number HHS-CDC-19-0493. The request seeks calendars or calendar entries for CDC Director Robert Redfield, including any maintained on his behalf, from the date he joined CDC to the date a search is conducted. *See* Ex. A.

By letter dated February 28, 2019, CDC acknowledged receipt of the request, and assigned it tracking number 19-00493-FOIA. *See* Ex. B. CDC also notified American Oversight that it considered the request “overly broad” and asked for “clarification of the subject matter of the records” sought. *Id.* at 2. In particular, CDC appeared concerned that American Oversight’s request sought “‘all calendars or calendar entries’ to include ‘any written, typed, recorded, graphic, printed, or audio material of any kind’ [and] ‘records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.’” *Id.*

American Oversight responded by email dated March 8, 2019, in an effort to respond to CDC’s concerns. *See* Ex. C. Specifically, American Oversight explained that the language cited by CDC in its letter was intended to be read in the context of the request for calendars, to ensure that CDC would produce all calendars and attachments to calendar entries, regardless of file type, but not necessarily that CDC would need to search any and all repositories of files for records responsive to the request. *See id.* American Oversight explained that it considers a request for calendars or



calendar entries of a single CDC official for a readily identifiable time period a proper, reasonably described FOIA request, meeting HHS regulations. *See id.*

By letter dated March 13, 2019, CDC responded that despite American Oversight's clarification, the "request remains overly broad. Your request is for all calendar items and supporting documentation/information for Dr. Redfield, without a limiting date range or specific topic." *See* Ex. D. CDC requested that American Oversight provide "additional information such as: a narrow date range; and/or a specific calendar entry subject; and/or a specific person (by name) who is the object of a calendar item." *Id.*

American Oversight responded by email, reiterating its position that the request met the relevant legal standards for a proper, reasonably described FOIA request. *See* Ex. E. American Oversight also stated that "[a]lthough [CDC's March 13, 2019] letter notes that American Oversight's request has been placed on hold and has not yet been closed, pursuant to HHS's FOIA regulations, we consider the letter an appealable, adverse determination." 45 C.F.R. § 5.61(c) ("Adverse determinations include . . . [d]etermination that a request does not reasonably describe the records sought.").

Accordingly, American Oversight appeals CDC's adverse determination, because the request at issue was reasonably described pursuant to FOIA, HHS's FOIA implementing regulations, and relevant case law. *See* 5 U.S.C. § 552(a)(3)(A); 45 C.F.R. § 5.22(a); *Yeager v. DEA*, 678 F.2d 315, 326 (D.D.C. 1982).

The Records American Oversight Requests Are Reasonably Described

FOIA requires agencies to make available records in response to a request that "reasonably describes such records." 5 U.S.C. § 552(a)(3)(A). As the Court of Appeals for the D.C. Circuit has noted, the "linchpin inquiry" of whether a FOIA request is reasonably described is not the potential number of records called for by the request, but rather "whether the agency is able to determine 'precisely what records (are) being requested.'" *See Yeager*, 678 F.2d at 326. Thus, in *Yeager*, although plaintiff's FOIA request sought "the substantive content of [an entire computer system]—over one million records," the court held that because "the DEA knew 'precisely' which of its records had been requested and the nature of the information sought from those records . . . the requested records were reasonably described in accordance with [FOIA]." *Id.* at 322, 326; *see also Pub. Citizen, Inc. v. Dep't of Educ.*, 292 F.Supp.2d 1, 6–7 (D.D.C. 2003) (finding reasonable a search of 25,000 files for data irregularly kept in the agency's database when the search was "certain to turn up responsive documents").

Courts have consistently recognized that the inquiry into whether a request is "reasonably described" is divorced from the volume of records requested. *See Tereshchuk v. BOP*, 67 F. Supp. 3d 441, 454–55 (D.D.C. 2014) (noting the court's skepticism "that a FOIA request may be denied based on sheer volume of records requested," and that "[t]his Circuit has similarly noted that the number of records requested appears to be irrelevant"). Indeed, decisions analyzing the question as to whether a request is "overbroad," have focused on whether the *search* for potentially relevant records would be unduly burdensome (which is the agency's burden to prove), not on the volume that may ultimately be produced in response. *See id.* at 455 (citing cases). And a search is

not unduly burdensome when agency personnel can readily determine precisely which records are the subject of the request. *See Yeager*, 678 F.2d at 326; *Truitt v. Dep't of State*, 897 F.2d 540, 545 n.36 (D.C. Cir. 1990) (“[a] ‘description’ of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort”); 45 C.F.R. § 5.22(a).¹

Here, American Oversight has requested a set of precisely described records, namely calendars or calendar entries of CDC Director Robert Redfield. *See* Ex. A at 1. In accordance with HHS’s regulations, American Oversight provided information to “help [CDC] find the records,” including the “individual[s] involved,” the “approximate date(s) when the records were created,” and a “description of the records sought.” *See* 45 C.F.R. § 5.22(a)(1)–(3). Agency staff can be expected to locate this discrete set of records with a reasonable amount of effort, not requiring a burdensome search. *See* 45 C.F.R. § 5.22(a); *Truitt*, 897 F.2d at 545 n.36. Indeed, other federal agencies have regularly responded to American Oversight’s FOIA requests for calendars, often involving multiple agency officials, as opposed to the single CDC official referenced in the request at issue here.³ American Oversight’s FOIA request seeks a “reasonably described” set of records in

¹ Moreover, so long as the description meets this standard, an agency cannot require a requester to limit a request by subject matter. *See, e.g., Muckrock LLC v. CIA*, No. 14-997, 2018 WL 1129713, at *20 (D.D.C. Feb. 28, 2018) (rejecting CIA’s unlawful policy of denying FOIA requests that did not specify sender, recipient, timeframe, and *subject matter*). “Congress intended the ‘reasonably described’ language to be interpreted liberally, and that this standard ‘should not be used to obstruct public access to agency records.’” *Id.* at 136 (quoting S. Rep. No. 93-854, at. 10 (1974)).

² American Oversight requested calendar entries from the date Dr. Redfield joined the CDC through the date the search is conducted. *See* Ex. A at 1. American Oversight understands Dr. Redfield’s start date at CDC to have been March 26, 2018, which we anticipate CDC can readily confirm.

³ *See, e.g., SBA Administrator McMahon and Senior Official Calendars*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/sba-administrator-mcmahon-and-senior-official-calendars>; *NASA Calendars for Administrator Bridenstine and Deputy Administrator Morhard*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/nasa-calendars-for-administrator-bridenstine-and-deputy-administrator-morhard>. Some agencies have responded (or are in the process of responding) to such requests as a result of litigation American Oversight has initiated to enforce our statutory rights under FOIA. *See, e.g., Complaint*, ECF No. 1, *American Oversight v. Dep’t of Commerce et al.*, Case No. 18-cv-534, D.D.C. (Mar. 8, 2018); *DOI Calendars for Deputy Chiefs of Staff Downey Magallanes and Michael Argo and CoS Scott Hommel*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doi-calendar-for-deputy-chiefs-of-staff-downey-magallanes-and-michael-argo>; *DOT Senior Political Appointee Calendars*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/dot-senior-political-appointee-calendars>; *HHS Secretary Azar’s Calendars*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/hhs-secretary-azars-calendars>. Even when litigation has been involved in the release of records, there has been no serious dispute as to whether the FOIA requests for calendars were proper under the statute or relevant regulations—but rather a question of the timeframe for the agencies’ responses.

accordance with FOIA, HHS regulations, and relevant caselaw, and CDC should promptly process it.

Conclusion

For the foregoing reasons, CDC has failed to meet its legal obligations under FOIA. American Oversight submitted a specific request meeting all applicable statutory and regulatory requirements. Accordingly, American Oversight appeals CDC's adverse determination and requests that CDC promptly conduct a search to identify records responsive to its FOIA request.

Thank you for your consideration of this appeal. As provided in 5 U.S.C. § 552(a)(6)(A)(ii), we look forward to your determination on our appeal within twenty working days. For questions regarding any part of this appeal or the underlying requests for records, please contact Katherine Anthony at foia@americanoversight.org or 202.873.3918.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

EXHIBIT A



February 27, 2019

VIA ELECTRONIC MAIL

Centers for Disease Control and Prevention
Freedom of Information Officer
1600 Clifton Road NE
Building 57, Room MS D-54
Atlanta, GA 30333
FOIARequests@cdc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations for the Department of Health and Human Services (HHS), 45 C.F.R. Part 5, American Oversight makes the following request for records. In particular, American Oversight seeks records that will inform the American public of how senior government officials are spending their time and resources.

Requested Records

American Oversight requests that the Centers for Disease Control and Prevention (CDC) produce the following within twenty business days:

All calendars or calendar entries for Robert Redfield, including any calendars maintained on his behalf. American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please provide all responsive records from the date Dr. Redfield joined CDC through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe



how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**²

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**³ Furthermore, agencies that have adopted the National Archives and

¹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

³ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies,

Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁴ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁵ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”⁶ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”⁷

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.⁸ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, your agency is on notice that litigation is reasonably foreseeable.

“Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁴ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁵ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁶ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphases in original).

⁷ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

⁸ *Mead Data Central*, 566 F.2d at 261.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."⁹ The disclosure of the information sought under this request will document and reveal the activities of the federal government, including how high-ranking agency personnel are using their official time, with whom they are meeting to discuss official agency business, and whether and to what extent external interests are influencing administration policy decisions. For example, in one prior case, American Oversight successfully obtained Education Secretary DeVos's calendar entries, which revealed DeVos's frequent absences from office, staffing choices, and the influence of charter schools and for-profit colleges on the Education Department.¹⁰ In this case, the requested calendar entries would "contribute significant to public understanding of the operations and activities" of officials leading your

⁹ 5 U.S.C. § 552a(4)(A)(iii).

¹⁰ See *Influence & Access at the Department of Education*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; <https://www.americanoversight.org/unexcused-absences-devos>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT, *Betsy DeVos's School Schedule Shows Focus on Religious and Non Traditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; *What Betsy DeVos's Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017 12:22 PM), <http://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

agency.¹¹ And, as described in more detail below, American Oversight's website and social media accounts demonstrate its ability and intention to effectively convey information to the public.

This request is primarily and fundamentally for non-commercial purposes.¹² As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹³ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,¹⁴ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.¹⁵ As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.¹⁶

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Katherine Anthony at foia@americanoversight.org or (202) 897-3918. Also, if American

¹¹ 5 U.S.C. § 552a(4)(A)(iii).

¹² *Id.*

¹³ American Oversight currently has approximately 12,200 page likes on Facebook and approximately 50,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 26, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 26, 2019).

¹⁴ *DOJ Records Related to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁵ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁶ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

EXHIBIT B



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333
February 28, 2019

Katherine Anthony
American Oversight
1030 15th Street NW Suite B255
Washington, District of Columbia 20005
Via email: foia@americanoversight.org

Dear Ms. Anthony:

This letter is regarding to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of February 27, 2019, assigned #19-00493-FOIA, for:

All calendars or calendar entries for Robert Redfield, including any calendars maintained on his behalf. American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please provide all responsive records from the date Dr. Redfield joined CDC through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how these individuals allocate their time on agency business.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**²

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**³ **Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

A copy of your full request is attached.

This letter is to notify you that your request is overly broad and to seek your clarification regarding the subject matter of the records you seek. The FOIA allows the public to request access to “reasonably described” existing agency records (subject to any applicable FOIA exemptions to disclosure). This means you must describe the category of records you are seeking or the actual document(s), and provide sufficient details to permit a search with reasonable effort, utilizing existing indices and search tools.

Your request asks for “all calendars or calendar entries...” to include “any written, typed, recorded, graphic, printed, or audio material of any kind.” Additionally the request is for “records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.” A search this broad cannot be accomplished with reasonable effort.

To assist the agency to conduct a reasonable search, please provide our office with additional information, such as: a request for a record by its title; a particular event; a narrow date range for

Page 3 – Katherine Anthony

records; recommended search terms; office(s) likely to have records requested; full names and accurate titles of individual(s) discussing the subject of your request; a subject matter; and/or, the precise document you seek.

Additionally, please note the FOIA allows the public to request access to “reasonably described” existing agency records. Your request for future records, as they relate to the processing of your FOIA request is outside the scope of FOIA and cannot be accomplished.

At this time, your request has been placed on hold until we receive the information requested. If you have any questions regarding your request, please contact Emerique Magyar at 770-488-6359.

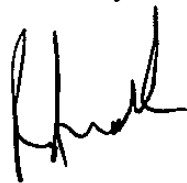
If we do not receive a response from you by March 28, 2019, we will consider your request withdrawn and it will be closed.

Appeal Rights

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. Please mark both your appeal letter and envelope “FOIA Appeal.” **Your appeal must be postmarked or electronically transmitted by June 26, 2019.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', with a stylized, cursive script.

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

19-00493-FOIA

EXHIBIT C

From: American Oversight FOIA foia@americanoversight.org
Subject: Re: Your CDC FOIA Request #19-00493-FOIA
Date: March 8, 2019 at 10:23 AM
To: FOIARequests@cdc.gov

AF

Dear Ms. Magyar,

I'm writing in response to your message below, attaching a letter from Roger Andoh regarding American Oversight's FOIA request for calendars of Director Redfield.

If I am interpreting Mr. Andoh's letter correctly, it seems like the primary concern with American Oversight's request is the portion that requests "any written, typed, recorded, graphic, printed, or audio material of any kind" and "records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions."

I wanted to clarify that this language is meant to be read in the context of the more specific request language, which asks for Director Redfield's calendars and describes the format and level of detail we expect the calendars to include. The more general language quoted above is intended to inform CDC that American Oversight expects the request to be construed liberally and that CDC will produce responsive records in whatever form they may take. We would not, for instance, generally expect that calendars are maintained in audio or video file formats; on the other hand, they could be in hard copy, electronic, or both, any of which would be responsive to our request. In addition, as we have requested attachments to the calendar entries, we consider all attachments to be responsive, regardless of file type, and would expect them to be produced.

Hopefully this clarification addresses your concerns, and we are in agreement that a request for calendars (in whatever file form they may take), of a single CDC official for a readily identifiable time period, is a proper, reasonably-described FOIA Request, meeting HHS regulations. See 45 C.F.R. § 5.22(a) (requesters should provide "a written description of the records you seek in sufficient detail to enable our staff to locate them with a reasonable amount of effort," which may include the "individual[]" involved," "approximate date(s)," and a "description of the records sought").

If CDC has further concerns, however, please let me know. I am happy to provide additional explanation or have a call if that would be helpful - please let me know.

Sincerely,
 Katie

Katherine M. Anthony
 Staff Attorney*
 American Oversight
foia@americanoversight.org | 202.897.3918
www.americanoversight.org | @weareoversight

*Admitted in Massachusetts. Practice supervised by members of the D.C. Bar while application for D.C. Bar membership is pending.

On Feb 28, 2019, at 4:14 PM, Magyar, Emerique <foiarequests@cdc.gov> wrote:

February 28, 2019

Request Number: 19-00493-FOIA

Dear Ms. Anthony:

This is regarding your Freedom of Information Act (FOIA) request of February 27, 2019, for respective copy of all calendars or calendar entries for Robert Redfield, including any calendars maintained on his behalf.

Please see the attached letter.

Sincerely,
 CDC/ATSDR FOIA Office
 770-488-6399 

<Too Broad.docx>

EXHIBIT D



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333
March 13, 2019

Katherine Anthony
American Oversight
1030 15th Street NW Suite B255
Washington, District of Columbia 20005
Via email: foia@americanoversight.org

Dear Ms. Anthony:

This letter is regarding to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of February 27, 2019, assigned #19-00493-FOIA, for:

All calendars or calendar entries for Robert Redfield, including any calendars maintained on his behalf. American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please provide all responsive records from the date Dr. Redfield joined CDC through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how these individuals allocate their time on agency business.

We have received your email of March 8, 2019, where you clarified the scope of your request as follows:

...American Oversight expects the request to be construed liberally and that CDC will produce responsive records in whatever form they may take. We would not, for instance, generally expect that calendars are maintained in audio or video file formats; on the other hand, they could be in hard copy, electronic, or both, any of which would be responsive to our request. In addition, as we have requested attachments to the calendar entries, we consider all attachments to be responsive, regardless of file type, and would expect them to be produced.

You further stated:

Hopefully this clarification addresses your concerns, and we are in agreement that a request for calendars (in whatever file form they may take), of a single CDC official for a readily identifiable time period, is a proper, reasonably-described FOIA Request, meeting HHS regulations. *See* 45 C.F.R. § 5.22(a) (requesters should provide "a written description of the records you seek in sufficient detail to enable our staff to locate them with a reasonable amount of effort," which may

Page 2 – Katherine Anthony

include the “individual[]” involved,” “approximate date(s),” and a “description of the records sought”).

This letter is to notify you that given the amount of material you are requesting, your request remains overly broad. Your request is for all calendar items and supporting documentation/information for Dr. Redfield, without a limiting date range or specific topic. A search of this nature cannot be accomplished with reasonable effort.

To assist the agency to conduct a reasonable search, please provide our office with additional information such as: a narrow date range; and/or a specific calendar entry subject; and/or a specific person (by name) who is the object of a calendar item.

At this time, your request has been placed on hold until we receive the information requested. If you have any questions regarding your request, please contact Emerique Magyar at 770-488-6359.

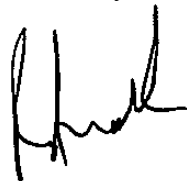
If we do not receive a response from you by March 28, 2019, we will consider your request withdrawn and it will be closed.

Appeal Rights

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. Please mark both your appeal letter and envelope “FOIA Appeal.” **Your appeal must be postmarked or electronically transmitted by June 26, 2019.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', with a stylized, cursive script.

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

EXHIBIT E

From: American Oversight FOIA foia@americanoversight.org
Subject: Re: Your CDC FOIA Request #19-00493-FOIA
Date: March 13, 2019 at 5:47 PM
To: Magyar, Emerique foiarequests@cdc.gov

AF

Hello,

I am writing in response to Mr. Andoh's letter sent earlier today concerning Request #19-00493-FOIA. Although the letter notes that American Oversight's request has been placed on hold and has not yet been closed, pursuant to HHS's FOIA regulations, we consider the letter an appealable, adverse determination. 45 C.F.R. § 5.61(c) ("Adverse determinations include . . . [d]etermination that a request does not reasonably describe the records sought."). As such, we intend to submit an administrative appeal.

As explained in American Oversight's March 8, 2019 email, we consider our request for calendars or calendar entries for Robert Redfield to be a proper FOIA Request pursuant to the statute and to HHS regulations. Indeed, other federal agencies have routinely responded to similar requests for calendars, often for multiple officials at their agencies. FOIA and HHS regulations require that a request be reasonably described, such that agency personnel can locate the records sought with a reasonable amount of effort. See U.S.C. § 552(a)(3)(A)(i); 45 C.F.R. § 5.22(a). Even if a request calls for a large number of potentially responsive records, that does not mean that they were not reasonably described. The relevant legal standard is not the number of potentially responsive records, but rather whether the requested records were described with sufficient specificity for agency employees to understand which records are sought. See *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002).

Again, we believe that our request is reasonably described, seeking specified documents (calendar entries) for one individual (Dr. Redfield), for a readily identifiable time period (Dr. Redfield's start date at CDC—which we believe to be March 26, 2018, and which we anticipate CDC can readily confirm—through the date a search is conducted). Accordingly, we are unable (nor are we required) to narrow our request by date range or subject matter. As noted, we plan to submit an administrative appeal explaining this position in more detail. Please let me know if you have any questions or would like to discuss.

Sincerely,

Katherine M. Anthony
 Staff Attorney*
 American Oversight
foia@americanoversight.org | 202.897.3918
www.americanoversight.org | @weareoversight

*Admitted in Massachusetts. Practice supervised by members of the D.C. Bar while application for D.C. Bar membership is pending.

On Mar 13, 2019, at 12:54 PM, Magyar, Emerique <foiarequests@cdc.gov> wrote:

March 13, 2019

Request Number: 19-00493-FOIA

Dear Ms. Anthony:

This is regarding your Freedom of Information Act (FOIA) request of February 27, 2019, for respective copy of all calendars or calendar entries for Robert Redfield, including any calendars maintained on his behalf.

Please see the attached letter.

Sincerely,
 CDC/ATSDR FOIA Office
 770-488-6399 

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